

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-TP-331
)	NAL/Acct. No. 200332700005
Westshore Broadcasting, Inc.)	
Licensee of AM Radio Station WOCA in Ocala,)	FRN 0003758000
Florida, and Owner of Antenna Structure #1027385)	
St. Petersburg, Florida		

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 1, 2002

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Westshore Broadcasting, Inc. (“Westshore”), licensee of AM station WOCA, Ocala, Florida, and owner of antenna structure #1027385 in Ocala, Florida, apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000) for willful and repeated violation of Sections 17.51, 17.57, and 73.49 of the Commission's Rules (“Rules”).¹ Specifically, we find Westshore apparently liable for failing to display all red obstruction lighting from sunset to sunrise, failing to update tower ownership information on the antenna structure registration, and failing to provide an effective locked fence around the base of the antenna.

II. BACKGROUND

2. On July 1, 2002, agents of the Commission's Tampa Field Office (“Tampa Office”) responded to a complaint alleging that the lights on Westshore's antenna structure #1027385 had been dark for at least six months. The agents drove to the antenna structure, which is used as part of AM radio station WOCA, and noted that the fence around the base of the antenna tower was unlocked. The agents covered the tower light photocell and noted that the tower lights did not illuminate.

3. On July 2, 2002, agents of the Tampa Office conducted an inspection of radio station WOCA AM. The station manager stated that the antenna structure lights had failed on or about September 26, 2001, and had not been repaired because service companies refused to climb the tower due to its poor structural integrity. The agent contacted the Federal Aviation Administration (“FAA”) and found no report of light outages for this structure. The agents found no record in the station's logs of any tower light outages. The station manager stated that the station licensee, Westshore, owned the antenna structure. The FCC's Antenna Structure Registration (“ASR”) database showed the structure registered to a previous owner.

III. DISCUSSION

¹ 47 C.F.R. §§ 17.51, 17.57, and 73.49.

4. Section 17.51 of the Rules requires antenna structure owners that have been assigned obstruction marking and lighting to display all red obstruction lighting from sunset to sunrise. Westshore's antenna structure lights failed on or about September 26, 2001 and had not been repaired as of July 2, 2002. The FAA had no record of a report of a light outage for this structure² and the station's logs showed no record of light outages or FAA notifications.³

5. Section 17.57 of the Rules requires the owner of an antenna structure for which an ASR Number has been assigned to immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information. Westshore is the current owner of the antenna structure, however, as of July 8, 2002, Commission records listed the previous licensee/tower owner.

6. Section 73.49 of the Rules requires antenna towers that have RF potential at the base to be enclosed within effective locked fences or other enclosures. The WOCA antenna tower is series fed and has RF potential at the base. On July 1 and July 2, 2002, the gated fence surrounding the tower was found unlocked.

7. Based on the evidence before us, we find Westshore willfully⁴ and repeatedly⁵ violated Sections 17.51, 17.57, and 73.49 of the Rules by failing to: display all red obstruction tower lighting from sunset to sunrise, update tower ownership information on the antenna structure registration, and provide an effective locked fence around the base of the antenna.

8. Pursuant to Section 1.80(b)(4) of the Rules,⁶ the base forfeiture amounts for the violations cited in this Notice are: \$10,000 for failure to comply with prescribed tower painting and marking; \$3,000 for failure to notify the Commission of a change in tower ownership (failure to file required forms or information); and \$7,000 for AM tower fencing. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Thus, considering the entire record and applying the statutory factors listed above, this case warrants a forfeiture of \$20,000.

² The owner of any registered antenna structure with assigned lighting must report immediately to the FAA any known improper functioning of any top light or flashing obstruction light. *See* 47 C.F.R. § 17.48(a).

³ The owner of any registered antenna structure with assigned lighting must maintain a record of any known improper functioning of lights and of any FAA notifications. *See* 47 C.F.R. § 17.49.

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁵ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503(b)(2)(D).

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ Westshore is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty thousand dollars for willful and repeated violation of Sections 17.51, 17.57, and 73.49 of the Rules by failing to display all red obstruction tower lighting from sunset to sunrise, failing to update tower ownership information on the antenna structure registration, and failing to provide an effective locked fence around the base of the tower.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Westshore SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this *NAL*, either in your response to the *NAL* or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this *Notice of Apparent Liability*. This information will be used for tracking purposes only. Your

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁰ See 47 C.F.R. § 1.1914.

response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Westshore Broadcasting, Inc., 311 112th Avenue Northeast, St. Petersburg, FL 33716.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director
Tampa Office, Enforcement Bureau

Attachment